RECORD, CASE No. 15,398.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 1014.

AH SING, APPELLANT,

vs.

THE UNITED STATES AND GEORGE E. GARD, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 25, 1893.

1 United States District Court, Northern District of California.

In the Matter of the Application of AH SING for a Writ of *Habeas Corpus*. No. 10736.

To the honorable the district court of the United States in and for the northern district of California, ninth circuit:

And now comes Ah Sing and makes this his petition and complaint to this honorable court, and respectfully shows:

I. That your petitioner is a person of the Chinese race, born in China, and not a naturalized citizen of the United States, and that at all the times hereinafter mentioned, and more especially at the time of the passage of the act of Congress approved May 5th, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," he was, always has been and still is entitled to remain in the United States, in that he was within the United States at the time of the passage of the act of Congress approved May 6th, 1882, and entitled "An act to execute certain treaty stipulations relating to Chinese," and has never thereafter and up to the time of making this his petition been without the United States, and that he now resides, and has resided for more than one year last past, in the county of Los Angeles, in the southern district of California.

II. That your petitioner on the 17th day of November, 1880, the day the treaty between the United States and China concerning immigration was concluded and signed, was within the United States, and was under the terms of said treaty accorded all the rights, privileges, immunities and exemptions which were then accorded to the citizens and subjects of the most favored nation, and prior to said last-named day, and in or about the month of July, 1879, had come to the United States with the intention of remaining and taking up his permanent residence therein, and with no definite intention of returning to China, and at the time of said treaty had become and has ever since been a permanent resident of the United States under and in pursuance of the invitation extended to him and at that time to all other Chinamen under the provisions of the fifth and sixth articles of the additional articles to the treaty between the United States of America and the Ta Tsing empire of the 18th of June, 1858, concluded and signed on the 28th day of July, 1868 (Burlingame treaty), which then and there declared that the high contracting parties "cordially recognize the inherent and

2 inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other, for purposes of curiosity, of trade, or of permanent residents," and further declared that "Chinese subjects * * * residing in the United States shall enjoy the same privileges, immunities and exemptions in respect to * * * residence as may be there enjoyed by the citizens or subjects of the most favored nation."

III. That heretofore, to wit, on the 3rd day of Sept., 1893, one Walter Benedict presented to the Honorable E. M. Ross, United States district judge in and for the southern district of California, a complaint verified by him, which charged that your petitioner was a Chinese laborer residing within the southern district of California, and within the jurisdiction and limits of the United States at the time of the passage of an act approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and that your petitioner was then and there entitled to remain in the United States, and was after one year from the passage of said act found unlawfully within the jurisdiction of the United States without the certificate of residence provided for in section 6 of said act. That thereupon the said district judge made an order directing that the said complaint be filed, and that a warrant issue, which warrant was thereafter issued and delivered to the marshal of the United States in and for the southern district of California. Copies of said complaint, order and warrant are hereto attached and made part hereof.

That afterwards, to wit, on the 4th day of September, 1893, the said United States marshal apprehended your petitioner and took him into custody and produced him before the said district judge.

IV. That the said Walter Benedict, who made and presented the complaint hereinabove referred to, is not and was not at any of the times herein mentioned, a customs official, collector or deputy collector of internal revenue, United States marshal or deputy United States marshal, or in any way connected with any of the executive departments of the Government of the United States.

V. That thereafter, on the 6th day of September, 1893, your said petitioner was brought before the district court of the United States in and for the southern district of California, and testimony was introduced on behalf of the Government and on behalf of your petitioner, and the cause thereupon submitted, and on the 8th day of September, 1893, the said district court in and for the southern district of California made an order directing that your petitioner be deported from the United States to China, and remanded your petitioner to the custody of Geo. E. Gard, United States marshal in and for the southern district of California. Copies of said orders are hereto attached and made a part hereof.

VI. That your petitioner is detained and restrained of his liberty by and in the custody of George E. Gard, the marshal of the United States in and for the southern district of California, under and by color of the authority of the United States, wrongfully and unlawfully, as your petitioner is informed and verily believes, and in violation of the provisions of the Constitution of the United States, and of the laws thereof, and of the various treaties made and entered into between the United States of America and the Chinese empire.

VII. That he has not been apprehended and is not detained by virtue of any judgment, order or decree, or other judicial process of any court other than the said order of the said United States judge heretofore referred to herein, and that he is now detained by virtue of the alleged claim and authority given to the said marshal of the

United States in and for the southern district of California by and under said order made by said judge.

3 VIII. That, as your petitioner is informed and verily believes, his detention by the said United States marshal in and for the southern district of California, by and under the direction of the order of said United States judge, is without jurisdiction and void and unconstitutional, and that your petitioner is restrained of his liberty without due process of law and against his rights under the Constitution of the United States and the laws thereof and the various treaties between the United States of America and the Chinese empire, and unlawfully and without authority, under the guise and color of proceedings against him for the commission of the alleged offense against the provisions of the said 6th section of the said act of Congress of May 5th, 1892, to wit, of not having applied to the collector of internal revenue of his district for a certificate of residence and of now being without such certificate of residence, which said alleged offense is not, as this petitioner is informed and verily believes, any offense whatever, in that the whole of said 6th section of said act of Congress of May 5th, 1892, is unconstitutional, void, and of no effect.

IX. That your petitioner is informed and verily believes that his detention by the United States marshal in and for the southern district of California, as aforesaid, is without jurisdiction, and void for the reason that the said Walter Benedict, who made and presented the complaint hereinabove referred to, was not at any of the times herein mentioned a customs official, collector or deputy collector of internal revenue, United States marshal or deputy United States marshal, and that the filing of said complaint and the issuance of a warrant thereon was without authority of law and in excess of the jurisdiction of the said district judge for the southern district of California, and that all proceedings thereunder were therefore illegal and void.

X. And your petitioner further says that no previous application for a writ of *habeas corpus* has been made by him to this or any other court or judge.

Wherefore your petitioner prays that this honorable court will order a writ of *habeas corpus* to be issued out of this court to said George E. Gard, the marshal of the United States in and for the southern district of California, requiring him to forthwith produce the body of your petitioner before this honorable court, and there to abide what shall be ordered by this honorable court in the premises.

And as in duty bound your petitioner will ever pray.

AH SING.

HARVEY S. BROWN AND
THOS. D. RIORDAN,
Attorneys for Petitioner.

CITY OF SAN FRANCISCO, } ss:
Northern District of California, }

Ah Sing, being duly sworn, deposes and says that he is the petitioner and complainant hereinbefore named; that he has heard read

and translated to him the foregoing petition and complaint and knows the contents thereof, and that the same is true of his own knowledge except as to those matters which are therein stated on his information or belief, and that as to those matters he believes it to be true.

AH SING.

Subscribed and sworn to before me this 11th day of September, 1893.

[SEAL.] JNO. F. LYONS,
Notary Public in and for the City & County of San Francisco, State of California.

4 [Endorsed:] No. —. U. S. district court, northern district of California. *In re* application of Ah Sing for writ of *habeas corpus*. Petition for writ. Filed September —, 1893. —— ——, clerk, by —— ——, deputy clerk. Harvey S. Brown and Thos. D. Riordan, attorneys for petitioners.

5 UNITED STATES OF AMERICA, *Southern District of California,* } *ss:*

Be it remembered that on this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-three, before me, William M. Van Dyke, a commissioner duly appointed by the circuit court of the United States of America for the southern district of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, etc., pursuant to the acts of Congress in that behalf, personally appeared Walter Benedict, who, being duly sworn according to law, deposes and says that Ah Sing, being a Chinese laborer at and residing in the county of Los Angeles, State of California, within the southern district of California and within the jurisdiction and limits of the United States at the time of the passage of an act approved May 5th, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and who was then and there entitled to remain in the United States, was, after one year from the passage of said act, to wit, on the 30th day of August, A. D. 1893, found unlawfully within the jurisdiction of the United States, to wit, at the county of Los Angeles, State of California, without the certificate of residence provided for in said act.

He, the said Ah Sing, still is and was residing in said county and State and in the first collection district of California during
6 all the time within one year after the passage of said act, contrary to the form of the statutes of the United States in such case made and provided and against the peace and dignity of the said United States.

WALTER BENEDICT.

Sworn to and subscribed this 31st day of August, 1893, before me—
WM. M. VAN DYKE,
Commissioner of U. S. Circuit Court,
Southern District of California.

Let the foregoing complaint be filed and a warrant issued.
E. M. ROSS,
Dist. Judge.

(Endorsed:) No. 468. U. S. district court, southern district of California. United States of America *vs.* —— ——. Complaint. Filed August 31st, 1893. E. H. Owen, clerk.

7 UNITED STATES OF AMERICA, }
Southern District of California, } *ss:*

The President of the United States of America to the marshal of the United States for the southern district of California and to his deputies or any or either of them, Greeting:

Whereas complaint on oath hath been made to me charging Ah Sing with a violation of the sixth section of the act of Congress entitled "An act to prevent the coming of Chinese persons into the United States," approved May 5, 1892:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Ah Sing and bring his body before the district court of the United States for the southern district of California on Monday, the 4th day of September, 1893, at 10.30 o'clock a. m., that he may then and there be dealt with according to law for the said offense.

Given under my hand this 31st day of August, in the year of our Lord one thousand eight hundred and ninety-three, and of our Independence the one hundred and eighteenth.

E. M. ROSS,
U. S. District Judge in and for the
Southern District of California.

Attest, etc.:
[SEAL.] E. H. OWEN, *Clerk.*

8 By virtue of the within warrant I have the body of Ah Sing before Hon. E. M. Ross this 4th day of Sept., 1893.
GEO. E. GARD, *U. S. Marshal,*
By W. B. GARD, *Deputy.*

(Endorsed:) No. 468. U. S. district court, southern district of California. United States of America *vs.* Ah Sing. Warrant of arrest. Filed Sept. 4th, 1893. E. H. Owen, clerk.

9 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the

city of Los Angeles, on Monday, the 4th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

UNITED STATES OF AMERICA
vs.
AH SING. } No. 468. Sec. 6, Geary Act.

George J. Denis, Esq., U. S. attorney, appearing for the Government; defendant present in custody of the marshal. The marshal having made return on the warrant hereinbefore issued, this case is called. Now comes the U. S. attorney and presents a telegram which he had received on September 2, 1893, from the U. S. Attorney General, which telegram is read by the court, ordered filed, and a copy substituted in lieu thereof. F. J. Thomas, Esq., appears and reads a telegram from A. B. Hotchkiss, Esq., attorney for defendant, and asks that this cause be continued at A. B. Hotchkiss' request until September 6th, 1893, at 3 p. m.

By consent of the U. S. attorney it is thereupon ordered that this cause be, and the same hereby is, continued until Wednesday, September 6th, 1893, at 2.30 p. m.

10 Form No. 2.

The Western Union Telegraph Company.

21,000 offices in America. Cable service to all the world.

Thos. T. Eckert, general manager. Norvin Green, president.

Receiver's No.: —. Time filed: —. Check: —.

Send the following message subject to the terms on back hereof, which are hereby agreed to.

SEPTEMBER 2ND, 189–.

Dated Washington, D. C., —— 2nd.

To U. S. Att'y Denis, Los Angeles, Calif.:

I am advised by the Secretary of the Treasury that there are no funds to execute the Geary law so far as same provides for deportation of Chinamen who have not procured certificates of residence. On that state of facts circuit court of United States for southern district of New York made following order: "Ordered that blank be, and he hereby is, discharged from the custody of the marshal, and ordered to be deported from the United States whenever provision for such deportation shall be made by the proper authorities." Ask court to make similar order in like cases.

OLNEY, *Att'y Gen'l.*

Read the notice and agreement on back.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays, the sender of a mes-
11 sage should order it repeated—that is, telegraphed back to the originating office for comparison. For this one-half the regular rate is charged in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender, without liability, to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of a message to any point on the lines of this company can be insured by contract in writing, stating agreed amount of risk and payment of premium thereon at the following rates, in addition to the usual charge for repeated messages, viz., one per cent. for any distance not exceeding 1,000 miles, and two per cent. for any greater distance. No employee of the company is authorised to vary the foregoing.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices, and if a message is sent to such office by one of
12 the company's messengers he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free-delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

THOS. T. ECKERT,
General Manager.
NORVIN GREEN,
President.

(Endorsed:) Nos. 468, '69, '70, '71, '72, '73. U. S. district court, southern dist. of California. Substituted copy of telegram from Attorney General. Filed Sept. 4th, 1893. E. H. Owen, clerk.

13 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city

of Los Angeles, on Wednesday, the sixth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA *vs.* AH SING. } No. 468. Prosecution under Sec. 6 of the Geary Act.

U. S. attorney present for the Government; defendant present in court in custody of the U. S. marshal, with counsel, A. B. Hotchkiss, F. J. Thomas, and R. A. Ling. Thereupon plaintiffs, to sustain the issue, having called as witnesses W. B. Gard and Walter Benedict, who are severally and respectively duly sworn and give their testimony, and the Government thereupon having rested, and the defendant having moved to dismiss the proceedings, which motion is denied, to which defendants except, and thereupon Ah Fawn having been sworn as interpreter, and defendant, to sustain the issue on his side, having called as a witness the defendant, Ah Sing, who is duly sworn and (through interpreter, Ah Fawn) gives his testimony, and it having been stipulated that I. R. Dunkelberger would testify as before, in case 470, U. S. *vs.* Fong Louie, and defendant having rested, and plaintiffs in rebuttal having recalled Walter Benedict, who gives his testimony, and the case thereupon having been
14 submitted, the court announces its decision as follows:

I find from the evidence and from the defendant's personal appearance and from his language, dress, and association that defendant is a Chinaman, and from his occupation that he is a laborer, and that he was such on the 5th day of May, 1892, and was then a resident of Los Angeles county, California, and has since remained such, and that he did not register in accordance with and in pursuance of the act of Congress of May 5th, 1892; that no excuse has been shown on his part for his failure to register, and upon those facts I order that he be deported to China. Findings, order, and judgment will be prepared accordingly.

15 In the District Court of the United States, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff, *vs.* AH SING, Defendant. } No. 468.

Findings, Order, and Judgment.

A verified complaint having been filed in this court charging Ah Sing with a violation of the sixth section of a certain act of Congress approved May 5, 1892, entitled "An act to prohibit the coming of Chinese persons into the United States," and a warrant for the arrest of the said Ah Sing having been issued by me, Erskine M. Ross, United States district judge in and for the southern district

of California, made returnable before the district court for the southern district of California on the 4th day of September, 1893, and the said Ah Sing having been duly apprehended upon said warrant by the United States marshal in and for the southern district of California and brought before the said court upon the 4th day of September, 1893, a hearing was thereupon had of the matters charged in said complaint, the United States of America being represented by its attorney, George J. Denis, Esq., and the said Ah Sing
16 by A. B. Hotchkiss and F. J. Thomas, Esqs., and testimony having been adduced, I, Erskine M. Ross, judge as aforesaid, from such testimony do find that said Ah Sing is by race, color, dress, and appearance a Chinese person, and is and was at the times hereinafter stated a laborer by occupation; that he was a resident of the State of California, to wit, of the county of Los Angeles, at the time of the passage of the act of Congress of May 5, 1892, and has since continued such resident; that said Ah Sing was, after May 5, 1893, found to be a resident within the jurisdiction of the United States and of this district without the certificate of residence provided for in the act of Congress above referred to; that the said Ah Sing has neglected, failed, and refused to comply with the provisions of said act in this, to wit, that he, the said Ah Sing, a Chinese laborer, neglected, failed, and refused to apply for and obtain the certificate of residence required by said act; that Ah Sing has not established to my satisfaction that, by reason of accident, sickness, or other unavoidable cause, he was unable to procure such certificate; that said Chun Shang Yuen is unlawfully within the United States:

Now, therefore, I, Erskine M. Ross, judge as aforesaid, upon the foregoing facts do hereby order that said Ah Sing be removed from the United States to China; and it is further ordered that said deportation of the said Ah Sing be made from the port of San Francisco, within the limits of the northern district of California,
17 and that he be hereby committed to the custody of the United States marshal for the southern district of California to carry out this order.

Dated at Los Angeles, this 8th day of September, A. D. 1893.

E. M. ROSS,
District Judge of the United States for the Southern District of California.

(Endorsed:) No. 468. In the district court of the United States for the southern district of California. The United States of America *vs.* Ah Sing. Findings, order, and judgment. Filed Sep. 8, 1893. E. H. Owen, clerk; Wm. M. Van Dyke, deputy.

18 At a stated term, to wit, the August term, A. D. 1893, of the district court of the United States of America in and for the southern district of California, held at the court-room, in the city of Los Angeles, on Friday, the eighth day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable Erskine M. Ross, district judge.

THE UNITED STATES OF AMERICA
vs.
AH SING.
} No. 468. Prosecution under Section 6 of the Geary Act.

Now comes F. J. Thomas, Esq., of counsel for defendant, and moves that proceedings be dismissed and defendant discharged; which motion the court declines to entertain; to which ruling defendant excepts; and thereupon defendant, by counsel, moves the court for a stay of proceedings in order that an appeal may be allowed; which motion is by the court denied; to which ruling defendant excepts.

19 In the District Court of the United States of America, Southern District of California.

UNITED STATES OF AMERICA, Plaintiff and Respondent,
vs.
AH SING, Defendant and Appellant.
} No. 468.

The above-named defendant and appellant, conceiving himself aggrieved by the final judgment duly made and entered in the above-entitled cause on the 6th day of September, 1893, and by the order duly made and entered on the 8th day of September, 1893, doth hereby appeal from said final judgment and said order to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and all papers on which said order was made in the said cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 8th day of September, 1893.

A. B. HOTCHKISS,
FRANCIS J. THOMAS,
Attorneys for said Defendant and Appellant.

Application being made to me for the allowance of the foregoing appeal, the same is refused, there being, in my opinion, no appeal from the order of deportation.

Los Angeles, September 8th, 1893.

ROSS,
District Judge.

20 Received copy of within this 8th day of September, 1893.

GEORGE J. DENIS,
United States Attorney.

(Endorsed:) 468. In the district court of the United States of America, southern district of California. United States of America, plaintiff and respondent, *vs.* Ah Sing, defendant and appellant. Filed Sep. 8, 1893. E. H. Owen, clerk; Wm. M. Van Dyke, deputy. Francis J. Thomas, 22 Temple block, Los Angeles, Cal., attorney-at-law.

21 In the District Court of the United States of America in and for the Southern District of California.

THE UNITED STATES OF AMERICA
vs.
AH SING. } No. 468.

I, E. H. Owen, clerk of the district court of the United States of America in and for the southern district of California, do hereby certify the foregoing 16 pages, numbered from 1 to 16, inclusive, to be a full, true, and correct copy of the record and of all proceedings in the above and therein entitled matter.

Attest my hand and the seal of said district court of the United States for the southern district of California this
[SEAL.] 9th day of September, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

E. H. OWEN,
Clerk of the United States District Court for the Southern District of California,
By WM. M. VAN DYKE,
Deputy Clerk.

(Endorsed:) No. 10736. U. S. district court, northern district of California. In the matter of the application of Ah Sing for a writ of *habeas corpus*. Petition for writ. Filed September 11th, 1893. Southard Hoffman, clerk. Harvey S. Brown and
22 Thomas D. Riordan, attorney- for petitioner, 6 Montgomery avenue, San Francisco.

23 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 11th day of September, in the year of our Lord one thousand eight hundred and ninety-three.

Present: The Honorable William W. Morrow, judge.

In the Matter of the Application of AH SING for a Writ of *Habeas Corpus*. No. 10736.

In this matter the application for the issuance of a writ of *habeas corpus* this day came on for hearing before the court—Harvey S. Brown, Esq., and Thomas D. Riordan, Esq., appearing as attorneys for the petitioner, and Charles A. Garter, Esq., United States attorney for the northern district of California, appearing on behalf of the United States—and, after hearing Mr. Riordan and Mr. Garter, it is by the court now here ordered that the application for the issuance of a writ of *habeas corpus*, as prayed for in the petition herein, be, and the same is hereby, denied, and that said petition be, and the same is hereby, dismissed.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of San Francisco, in the northern district of California, in the ninth circuit, this 13th day of September, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

Seal of the U. S. District Court, Northern Dist. of California.

SOUTHARD HOFFMAN, *Clerk.*

Endorsed on cover: Case No. 15,398. N. California D. C. U. S. Term No., 1014. Ah Sing, appellant, *vs.* The United States and George E. Gard, United States marshal for the southern district of California. Filed September 22d, 1893.